IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NO : 9553 of 1995

Between:

Sri Sai Enterprises (Registered),Punganur Rep.by its Managing Partner Balineni Venkata Ramana, S/o.Sri B.Venkatappa R/o.Punganur,Chittoor District

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..... PETITIONER

AND

1 The Commissioner and Inspector General of Registration and Stamps,

Govt.of A.P, Exhibition Grounds Hyderabad.
2 The Registrar of Chits, Punganur Chittoor Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring that the Circular Memo.No.CF/3170/95 dated 7-2-1995 of the Commissioner and Inspector General of Registration and Stamps, A.P. ,Hyderabad, 1st respondent herein, directing the insistence of every foremen to file Xerox Copy of agreement of guaranty along with the minutes proceedings every month, is illegal, arbitrary and opposed to the principles of natural justice.

For the Petitioner: MR.S.V.SUNDARARAJAN, Advocate

For the Respondent Nos.1 and 2: GP FOR REVENUE

The Court made the following :

ORAL ORDER

This Writ Petition is filed challenging the Circular Memo No. CF/3170/95, dated 7-2-1995 of the Commissioner and Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad, by which the Foreman of the chit fund company is directed to file the Xerox copy of the Agreement of Guarantee along with the minutes of the proceedings every month, as illegal and opposed to the principles of natural justice.

According to the learned counsel for the petitioner Mr. S.V. Sundararajan, the petitioner, Sri Sai Enterprises, is a chit fund company, registered under the Chit Fund Act and is carrying on its chits business. The usual practice at the time when the prized bidder is given the prized subscription, he has to take sufficient security towards the balance payments that are to be paid. However, the 1st respondent issued a circular dated 7.2.1995 to the effect that the security bond issued by the prized subscriber has to execute an agreement of guarantee (security bond) which attracts stamp duty at the rate of 3 per cent of the value of the security, subject to a

maximum of Rupees one hundred and, thus, insisted upon the payment of the said stamp duty and the same is wholly without jurisdiction. It is the further submission of the learned counsel for the petitioner that the security may be in the form of a promissory note, movable property or immovable property, surety etc. and as such it does not fall within the meaning of Article 48 of Schedule-I-A of the Indian Stamp Act and the said Circular is without jurisdiction. In this context, learned counsel has drawn my attention to a judgment of this Court in ***Margadarsi Chit Fund Pvt. Ltd., Hyderabad v- The State Government of Andhra Pradesh***.

Heard both the learned counsel.

In this context, it is necessary to extract the circular instructions issued by the 1st respondent.

> *'' In this connection, it has come to the notice that most of the Chit Fund companies are avoiding the security bond and only be taking promissory note as guarantee the bid amount is being paid. Since there is a failure to comply with the provisions of A.P.C.F. Act and avoidance of execution of the documents falling under Article 48 of Schedule 1-A, the Inspecting Officer of Chits and District Registrar is requested to issue instructions to all Chit Registrars (Sub-Registrars) in his jurisdiction to insist every foreman to file the Xerox copy of agreement of guarantee along with the minutes proceedings every month. The Chit Registrar (Sub-Registrar) should report the Stamp duty collected from each office''*

In similar circumstances, when the Government issued administrative orders deleting certain bye-laws incorporated by the Chit Fund Companies in the conduct and management of the chit business, this Court in the judgment referred supra has categorically held that the very same is without jurisdiction. Para-8 of the said judgment clearly held that the State Government has failed to trace its authority to issue such directions or clarifications with reference to any of the provisions of the Chit Fund Act or even otherwise and thus held that

the said instructions are ultra-vires of the statute.

In the light of the said decision of a Division Bench of this Court, I have no hesitation to come to the conclusion that the circular instructions issued by 1st respondent by its proceedings dated 07-02-1995 are wholly without jurisdiction and are liable to be set aside.

This writ petition is accordingly allowed and the said Circular instructions dated 07-02-1995 are hereby set aside. No costs.

2nd December, 2004

vp

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Second day of July, two thousand and four.

Asst. Registrar

To

1. The Commissioner & Inspector General of Registration and Stamps, Government of Andhra Pradesh, Exhibition Grounds, Hyderabad
2. The Registrar of Chits, Punganur, Chittoor District
3. 2 C.Cs to Govt. Pleader for Revenue, High Court buildings, Hyderabad (O.U.T.)
4. 2 C.D. copies.